

Review of the Justice Administrative Commission

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**The Florida House of Representatives
Marco Rubio, Speaker**

INTERIM PROJECT REPORT REVIEW OF THE JUSTICE ADMINISTRATIVE COMMISSION

Methodology

Staff reviewed Florida law governing the Justice Administrative Commission (JAC) since its inception, reviewed historical budget and workload information, interviewed parties served by the JAC, and reviewed arrangements in other states. Interviews with the stakeholders were conducted in September 2007. These interviews included the Executive Director of the JAC, the Florida Public Defender Association, the Florida Prosecuting Attorneys Association, the Capital Collateral Regional Counsels, and the Statewide Guardian Ad Litem.

The Commission

The JAC is charged with the “maintenance of a central state office for administrative services and assistance when possible to and on behalf of the state attorneys and public defenders of Florida, the capital collateral regional counsel of Florida, the criminal conflict and civil regional counsel, and the Guardian Ad Litem Program.”¹ While the agencies served by the JAC continue to prepare budgets, vouchers for reimbursement, and other items incidental to their operation, these must be forwarded to the JAC for recording and submission to the proper state officer.² Upon request, the JAC will assist in the preparation of budget requests, voucher schedules, and other forms and reports.³ Specific duties related to the payment for services for conflict counsel are discussed under that heading below.

There are four members of the Commission and each serve two year terms and are selected in the following manner:

- Two state attorneys appointed by the president of the Florida Prosecuting Attorneys Association.
- Two public defenders appointed by the president of the Florida Public Defender Association.⁴

The Commission is authorized to hire an executive director and set the director’s salary.⁵ The executive director may employ personnel as necessary and according to a classification and pay plan annually approved by the Commission.⁶ The employees of the JAC are exempt from the Career Service System and are not

¹ Section 43.16(5)(a), F.S.

² Section 43.16(5)(b), F.S.

³ Id.

⁴ Section 43.16(2), F.S.

⁵ Section 43.16(4)(a), F.S.

⁶ Section 43.16(4)(a), F.S.

included in the Senior Management Service or the Selected Exempt Service.⁷ JAC employees in permanent positions must be offered benefits comparable to those offered under the Career Service System.⁸ The Commission may offer benefits in excess of those offered under the Career Service System only to employees who are appointed to positions designated as having managerial or policymaking duties or positions requiring membership in the Florida Bar.⁹ Each year the JAC must submit to the Governor and the Legislature a list of all positions receiving benefits greater than those benefits offered under the Career Service System.¹⁰

Members of the JAC are not paid a salary for their Commission service but they may be reimbursed for necessary travel expenditures incident to official business of the Commission in accordance with the provisions of s. 112.061, F.S.¹¹ The JAC has its headquarters in Tallahassee. The JAC is exempt from the Administrative Procedures Act¹² and it is exempt from paying the fees imposed on state agencies for online procurement services pursuant to s. 287.057(23), F.S.¹³

Background

The JAC was first created as the Judicial Administrative Commission in 1965.¹⁴ The original purpose of the JAC was to provide administrative support to the state courts, the offices of the state attorneys and public defenders, and court reporters.¹⁵ JAC members originally served two-year terms and included the Chief Justice or designee, one district court judge (appointed by the Chair of the Conference of Appellate Judges), one circuit court judge (appointed by the Chair of the Conference of Circuit Court Judges), one state attorney (appointed by the Chair of the Florida Prosecuting Attorneys Association), and one public defender (appointed by the Chair of the Conference of Public Defenders).¹⁶ The original legislation specifically placed the JAC within “the judicial department of the State of Florida.”¹⁷

⁷ Section 43.16(4)(b), F.S.

⁸ Section 43.16(4)(c), F.S.

⁹ Section 43.16(4)(d), F.S.

¹⁰ Section 43.16(4)(e), F.S.

¹¹ Section 43.16(3), F.S.

¹² Section 43.16(7), F.S.

¹³ Section 43.16(1), F.S.

¹⁴ See ch. 65-328, L.O.F.

¹⁵ Section 5, ch. 65-328, L.O.F.

¹⁶ Section 2, ch. 65-328, L.O.F.

¹⁷ Section 1, ch. 65-328, L.O.F.

In 1972, the Florida Constitution was amended to adopt an entirely revised Judicial Article.¹⁸ As part of this revision, language was added that the “chief justice of the supreme court . . . shall be the chief administrative officer of the judicial system.”¹⁹ That same year, the Florida Supreme Court created the position of the State Courts Administrator. The Supreme Court assigned to this position the responsibility of handling administrative matters for all the appellate courts in the state. The administrative responsibilities relating to the circuit courts remained with the JAC.

In 1978, the authority of the JAC was expanded to include administrative support of the county courts.²⁰ The membership of the Commission was increased at this time to include one county court judge.²¹

In 1984, the role of the JAC was again altered. As further implementation of the 1972 revised Judicial Article, the Supreme Court assumed the remaining administrative responsibilities (county and circuit courts) for the judicial system from the JAC. Funds for this purpose were appropriated by the Legislature to the Court in the General Appropriations Act of 1984 and in the letter of intent accompanying the Act. The JAC statute, s. 43.16, F.S., was amended the following year to reflect this transfer.²² With the removal of court responsibilities, the name of the JAC was changed from the “*Judicial* Administrative Commission” to the “*Justice* Administrative Commission.”²³ In addition, the makeup of the JAC was changed from a six-member body to a four-member body comprising two state attorneys and two public defenders.²⁴

While some responsibilities were removed from the JAC in 1984, the JAC received additional responsibilities in 1985. The Office of Capital Collateral Representative was created in 1985 and was assigned for administrative purposes to the JAC.²⁵

Due Process Costs

A significant change to the responsibilities of the JAC occurred as a result of the 1998 adoption of Revision 7 to Article V of the Florida State Constitution. The Revision provided, among other changes, that by July 1, 2004 state revenues must be used to fund the state courts system, less salaries, costs and expenses necessary to meet local requirements. As part of this shift from county to state funding of certain parts of the court system, was a requirement that the state pay for what is known as "due process costs." Due process costs are the cost of attorneys and other related legal services that must be provided at government expense to indigent persons involved in certain types of cases because of constitutional or statutory requirements. These services are

¹⁸ S.J.R. 52-D, 1971; adopted 1972.

¹⁹ FLA. CONST. art. V, § 2(b).

²⁰ See ch. 78-174, L.O.F. The creation of the county courts was part of the 1972 revision to Article V.

²¹ *Id.*

²² See s. 1, ch. 85-86, L.O.F.

²³ *Id.*

²⁴ *Id.*

²⁵ Chapter 85-332, L.O.F.

typically provided by public defenders, or may be provided through private attorneys and private service providers when the Public Defender has an ethical conflict. The relevant portion of Revision 7 reads:

(a) All justices and judges shall be compensated only by state salaries fixed by general law. Funding for the state courts system, state attorneys' offices, public defenders' offices, **and court-appointed counsel**, except as otherwise provided in subsection (c), shall be provided from state revenues appropriated by general law (emphasis added).²⁶

The primary reasons that a court may appoint a private attorney to represent an indigent person are to represent a defendant in a criminal proceeding when the Public Defender encounters a conflict of interest or to represent a parent of a child involved in certain dependency proceedings where the parent is at risk for termination of parental rights. In addition to appointment of an attorney for an indigent person, there are often court-related expenses for various services that must also be paid. Such services include court reporters, investigators, expert witnesses, interpreters, and mental health evaluations.

In 2004, the JAC assumed the administrative duties related to contracting with court-appointed attorneys and related service providers.²⁷ Fees and expenses ordered by a court are submitted by the providers to the JAC for payment. The number of full-time positions at the JAC went from 29 to 111 as a result of this shift in responsibility.

The associated responsibilities for the payment of these due process costs include:

- The approval of uniform contract forms for use in support of billing for attorney's fees, costs, and related expenses to demonstrate the attorney's completion of specified duties. Section 27.40(5), F.S.
- The requirement that to be included on a registry, an attorney must enter into a contract for services with the JAC. Section 27.40(3)(a), F.S.
- Separately tracking expenditures and performance measures for private court-appointed counsel for each of the categories of criminal or civil cases in which private counsel may be appointed. Section 27.405(1), F.S.
- The requirement to prepare, issue, and distribute a quarterly statewide report comparing actual year-to-date expenditures to budget amounts for each of the judicial circuits; comparing performance measures for each of the judicial circuits. Section 27.405(2), F.S.
- The requirement to track and issue a report on the race, gender, and national origin of private court-appointed counsel for the Eleventh Judicial Circuit. Section 27.405(3), F.S.
- The requirement to report quarterly to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the number of orders granting motions by public defenders to withdraw for each circuit. Section 27.5303(1)(a), F.S.

²⁶ FLA. CONST. art. V, § 14(a).

²⁷ Sections 13, 14, 19, and 20, ch. 2003-402, L.O.F.

- The requirement to compensate private court-appointed counsel as provided by law. Section 27.5304(1), F.S.
- The requirement to review invoices for payment on a flat fee per case for completeness and compliance with contractual and statutory requirements and approve for payment without approval by the court if the billing is correct. Section 27.5304(2), F.S.
- The requirement to provide by contract for imposition of a penalty of 15 percent of the allowable attorney's fees, costs, and related expenses for a bill that is submitted more than 90 days after the disposition of the case at the lower court level, notwithstanding any appeals. Section 27.5304(4), F.S.
- When appropriate, the requirement to contest any motion for an order approving payment of attorney's fees, costs, or related expenses. Section 27.5304(12)(c), F.S.
- The requirement to provide to the Office of the State Courts Administrator data concerning the number of cases approved for compensation in excess of the statutory limitations and the amount of these awards by circuit and by judge. Section 27.5304(12)(f), F.S.

Offices of Criminal Conflict and Civil Regional Counsel

In 2007, the responsibility of providing legal representation where a public defender is forced to withdraw due to an ethical conflict was revised by creating five Offices of Criminal Conflict and Civil Regional Counsel to provide this representation in the majority of cases.²⁸ Each office of criminal conflict and civil regional counsel is assigned to the JAC for administrative purposes. The JAC provides administrative support and service to the offices, however, the offices are not subject to control, supervision, or direction by the JAC in the performance of their duties.²⁹ Employees of the offices are governed by the classification plan and the salary and benefits plan adopted by the JAC.³⁰

This new arrangement is still being implemented at this time. The five Regional Counsels have been appointed and they are in various stages of finding office space, hiring attorneys and other staff, and taking on cases. Private counsel and providers are still being used until implementation is complete and will be used for cases where the Regional Counsels have conflicts.

A recent Circuit Court decision has been issued which has held the new law unconstitutional.³¹ It is unclear what the final impact of this decision will be. However, what is clear is that this policy area, and the related role of the JAC, will remain uncertain until it is resolved.

²⁸ Section 4, ch. 2007-62, L.O.F.

²⁹ Section 27.511(2), F.S.

³⁰ *Id.*

³¹ *Fla. Assn. of Criminal Lawyers v. Fla. Gov. Crist, et al.*, (Fla. 2nd Cir. Ct., Dec. 20, 2007). The Circuit Court ruled the new appointed positions were a second tier of public defenders and violated the Florida Constitution's requirement that public defenders be

Other States

State laws were reviewed in order to compare statutory schemes to Florida's in this area. No other state has anything that directly compares to the JAC. The reason for this could be a few factors that are unique to Florida. Tennessee is the only state other than Florida that elects its public defenders (a few counties in Nevada and the City of San Francisco also elect public defenders). Florida has addressed the coordination of its guardian ad litem program at the state level. Florida has a unique history regarding the development of its present judicial system and the existing role of the JAC is a byproduct of that unique history. Florida has chosen to create a state entity to handle its collateral capital appeals.

Other states have varying approaches to providing services such as those provided by the entities supported by the JAC. Some states have private attorneys handle indigent criminal defense services. Other states have public defenders that handle only appeals. Most do not address the coordination of guardians ad litem at the state level. No other state was found to have a state entity such as the JAC that provides only administrative and support services to certain other justice system entities.

Some states have some a state body to coordinate certain indigent legal defense services. These entities were typically charged with oversight of the provision of public defender services, whether they were performed by government-employed attorneys or through contracts with private attorneys. These commissions may also have oversight of related services, such as appeals, death penalty cases and collateral appeals, and certain types of civil cases. One service that was not found under these entities was state criminal prosecution services.

Conclusions

This review has found that the responsibilities of the JAC have been quite varied since its inception in 1965. The role of the JAC has been significantly altered in the past several years with the addition of the guardian ad litem program, but more significantly by the addition of responsibilities in the area of paying for due process costs, and again last year with the creation of the regional conflict counsels. With the current legal challenges to the regional conflict counsels, the possibility exists for more changes yet to come. By all accounts, including conversations with interested parties, the JAC and its staff have done a very credible job notwithstanding the changes and transitions.

It can be observed that the membership of the JAC is not representative of all the various entities it serves. It is true that the guardian ad litem, the capital collateral representatives, and the regional conflict counsels are not represented directly on the JAC. However, all parties seemed satisfied with the performance of the JAC members to date. The Commission members are conscientious and seemed to make decisions based on the best interests of all. The JAC provides administrative support to the various agencies but does not have any substantive authority over these entities.

Policy Options

elected. The Florida Supreme Court has scheduled oral arguments in this case for February 27, 2008, and has issued a stay pending the appeal that allows the regional conflict counsels to keep their offices open and continue accepting cases.

As discussed in the Conclusions above, the JAC has been through a great deal of change in the past several years. This constant change makes it difficult to assess the best course of action to take at this time. Some possible options are:

1. Revise the membership of the JAC to reflect the various entities served by the JAC.
2. Consider the proposal discussed below recommended by the Florida Prosecuting Attorneys Association.

During this review, the Florida Prosecuting Attorneys Association submitted to staff a proposal to remove from the JAC any responsibility for providing administrative support for state attorneys. This proposal may be filed as legislation for the 2008 Session. The Association suggests that a separate entity be created that could be housed in the existing office space of the JAC. They suggest that 13.5 full-time equivalent positions are now being used to provide their support under the JAC and that the new office would only need 7 of these positions, therefore, creating a savings of 6.5 positions.

Part of their justification, other than potential cost savings, is that the present arrangement presents somewhat of a conflict for the state attorney members of the JAC. Many of the issues that come before the JAC for consideration relate to the payment of costs used in the criminal defense of indigent persons. Because the state attorneys come from the prosecutorial side of criminal proceedings, they feel it is somewhat difficult for them to be called on to weigh in on these issues.

3. Make no changes at this time. This option allows time for the regional conflict counsel legal challenge to work its way through the appellate courts.